



March 19, 2007  
NOTICE TO PUBLIC  
RFP #200639



**REQUEST FOR PROPOSALS FROM OFFERORS TO BE AWARDED A FRANCHISE  
FOR USE OF PUBLIC PROPERTY FOR THE INSTALLATION OF A CITYWIDE  
WIRELESS NETWORK**

The City of Winchester will accept proposals until 2:00 p.m. local time on May 8, 2007, in the office of the Finance Department - Purchasing Division, 15 North Cameron Street, 1st Floor - Rouss City Hall, Winchester, VA 22601. This RFP is for proposals from qualified firms or groups of firms and their sub s (hereafter, "the Grantee"), to be awarded a franchise for the use of public property for the installation and operation of a citywide wireless network.

Offerors should carefully examine the specifications and fully inform themselves as to all conditions and matters, which would in any way affect the equipment/materials/service of cost thereof. Should an offeror find discrepancies in or omissions from the specification or request for proposal, he/she should notify the Finance Director and obtain clarification prior to submitting the proposal. Only questions answered by formal Addenda will be binding; oral and other interpretations or classifications will be without legal effect.

A non-mandatory pre-proposal conference will be held at 10:00 a.m. March 30, 2007. The location for this conference is:

City of Winchester  
Council Chambers  
Rouss City Hall  
15 N. Cameron Street  
Winchester, VA 22601

The right is reserved, as the interest of the CITY may require, to revise or amend the specifications prior to the date set for opening proposal; the opening date may be postponed if deemed necessary by the City's Purchasing Agent. Such revisions and amendments, if any, will be announced by written Addenda to the specifications. ***In addition, the CITY reserves the right to accept or reject any proposals, in whole or in part, and to waive any informality.***

One (1) original and ten (10) paper copies and one electronic copy of proposals are to be submitted in a sealed envelope bearing the Offeror's company name, address, the proposal name and number and the date and time due and mailed or delivered to:

City of Winchester  
Finance Department - Purchasing Division  
15 North Cameron Street, 1st Floor - Rouss City Hall  
Winchester, Virginia 22601

BY: Steven Corbit  
Purchasing Agent

**CITY OF WINCHESTER**  
**DEPARTMENT OF FINANCE**  
15 N. Cameron Street  
Winchester, VA 22601

**REQUESTING PROPOSALS FROM OFFERORS TO BE AWARDED A FRANCHISE  
FOR USE OF PUBLIC PROPERTY FOR THE INSTALLATION OF A CITYWIDE  
WIRELESS NETWORK**

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**March 19, 2007**

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# **I. INTRODUCTION AND PURPOSE**

## **INTRODUCTION:**

The City, founded in 1744, is the oldest Virginia City west of the Blue Ridge Mountains. Located at the northern entrance to the Shenandoah Valley, the City is the industrial, commercial and agricultural center for the surrounding area, and is the county seat of Frederick County.

The City encompasses 9.3 square miles and is located at the crossroads of U.S. Highways 11, 17, 50, 522, Interstate 81 and State Route 7. Interstate 66, terminating 10 miles south of the City at Interstate 81, provides a third transportation artery to Washington, D.C., 72 miles to the southeast. The City's current population is estimated at 25,000 and the City employs approximately 500 people. The per capita income for Winchester-Frederick County in 2004 was \$30,686. As of 2000, 24% of adults had a bachelor's degree or higher. Offerors are expected to be familiar with the physical characteristics of the City prior to submitting proposals.

The City of Winchester (the "City"), has established a goal to strengthen the City's economy and transform Winchester's neighborhoods by providing wireless internet access throughout the City.

## **PURPOSE:**

The purpose of this Request for Proposal (RFP) is to receive proposals from qualified firms to provide a convenient, wireless internet public service to stimulate economic development and tourism by drawing people to Winchester, promote the image of Winchester as a high-tech community, and test the feasibility of using wireless devices for municipal operations.

Based on the desire for a municipal wireless network, and the City's desire to increase broadband Internet access and options for all types of users, the City proposes to grant a franchise, in the manner prescribed by State law, permitting the design, construction, maintenance, and operation of a citywide wireless network in the public rights-of-way and on other public property. This document explains the procedures for submitting a proposal and provides the specifications and conditions under which the franchise may be granted.

## **TERM OF FRANCHISE CONTRACT:**

The original term of contract will be determined through negotiation and specified in the franchise agreement, but it shall be more than 5 years and less than 30 years.

## **PRE-PROPOSAL CONFERENCE:**

A non-mandatory pre-proposal conference will be held at 10:00 a.m. local time on March 30, 2007. The location for this conference is:

Council Chambers  
Rouss City Hall  
15 N. Cameron Street  
Winchester, VA 22601

## **SCHEDULE OF EVENTS:**

- |                                       |                              |
|---------------------------------------|------------------------------|
| 1. Pre-proposal Conference -          | 10:00 a.m. March 30, 2007    |
| 2. Submission of Proposals (Part I) - | Due by 2:00 p.m. May 8, 2007 |
| 3. Receipt of Proposals at Council -  | 7:30 p.m. May 8, 2007        |
| 4. Interviews (Part II) -             | TBD                          |
| 5. Award of Franchise -               | TBD                          |

## II.

### MINIMUM QUALIFICATIONS:

All bidders shall provide documentation with their bid submission that they meet or exceed the minimum qualifications stated herein. *Failure to provide this documentation may result in the bid being deemed non-responsive and rejected.*

1. Provide documentation that the firm is licensed under the applicable laws of the Commonwealth of Virginia and the City of Winchester. Foreign (out of state) corporations desiring to transact business in the Commonwealth of Virginia must register with the State Corporation Commission in accordance with Sections 13.1-48 through 13.1-121 of the Code of Virginia. Proof of registration, or proof of application for such registration, should be provided with the proposal.

## III. SCOPE OF SERVICES

### A. OVERVIEW

The City of Winchester, Virginia (hereafter “the City”) solicits proposals from qualified firms or groups of firms and their subcontractors (hereafter, “the Grantee”), to be awarded a franchise for the use of public property for the installation and operation of a citywide wireless network (hereafter, “the network”). The selection process and ensuing project shall comply in all respects with the provisions of Chapter 21 Title 15.2 and Chapter 43 of Title 2.2 of the Code of Virginia to the extent applicable.

The City’s goals and objectives for a citywide wireless network are:

1. The Grantee will provide, install, maintain, upgrade, and operate all equipment necessary for a citywide network that enables users to connect to each other, the Internet, or both.
2. In exchange for the right to mount equipment on public rights-of-way and other public property at little or no cost to the Grantee, the Grantee will provide the following public benefits:
  - a. The City will have free use of the network for municipal use.
  - b. The public will have free wireless Internet access in certain outdoor areas and public facilities in the City.
  - c. Low-income residents may purchase wireless Internet access at a cost significantly below market rate.
3. The Grantee will be expected to pay the City some amount of rent for the use of City property in or on which equipment is installed. Proposals should indicate the annual rent proposed by the Grantee, or the in-kind services (such as those in A.2. above) proposed in lieu of rent.
4. To provide a return on its investment, the Grantee will sell retail wireless Internet access to residential and business customers and wholesale network access to other providers for resale.

5. To promote a fair and equitable market for Internet services, in which both businesses and consumers receive the most benefit:
  - a. The City will not offer an Internet product or service to the public in competition with a private provider.
  - b. Franchises will not be exclusive. Although only one franchise will be awarded under the process to which this document applies, this does not preclude the City from soliciting for and awarding another wireless franchise at a later date.
  - c. Grantees will not discriminate in the provision of retail or wholesale accounts on any unlawful basis, and wholesale access to the network will be available to all providers, regardless of type or market condition, if they meet appropriate technical standards.

The remainder of this Section describes the above model in greater detail. The specific terms of any franchise will be negotiated based on these terms. These terms and conditions described herein represent the City's highly desirable goals and objectives, but may be waived by the City if, in the City's sole discretion, such waiver would be in the City's best interest.

## **B. PROJECT ENVIRONMENT**

1. Winchester is located in the Shenandoah Valley, approximately sixty miles from Washington D.C. The estimated 2005 City population was 25,700, with approximately 11,600 housing units. The Winchester Metropolitan Area had a 2005 population of 93,300. The per capita income for Winchester-Frederick County in 2004 was \$30,686. As of 2000, 24% of adults had a bachelor's degree or higher.
2. The City of Winchester has a historic urban core area of approximately 70 blocks laid out in a grid pattern with a rich mix of residential and commercial buildings including many architectural styles. A 0.3-mile long pedestrian mall lies at the city's center and features numerous shops, outdoor cafes, and professional offices. Most government offices for Winchester and Frederick County are clustered in the downtown area. Structures range from one to seven stories in height.
3. Suburban development surrounds the center city core with commercial developments extending along US Rte 11 to the north and south and along US Rte 17/50/522 and State Rte 7 to the east. A major concentration of newer commercial development extends along I-81 along the eastern boundary of the City just south of Exit 313.
4. The Winchester Medical Center and related medical offices dominate the Rte 50 corridor to the west of the center city. Shenandoah University extends along I-81 north of Exit 313. Newer industrial development is primarily concentrated in the south end of the City while older apple-related industries are situated at the north end of the City.
5. Residential development is characterized by medium density development in the eastern areas with low density residential in the western areas of the City. High density

residential developments, including multifamily and townhouses are clustered in areas to the north and south central areas with a few complexes along the eastern edge.

6. Offerors (or their representatives) are expected to have visited and be familiar with the physical characteristics of the City prior to submitting proposals.

## **C. THE NETWORK**

1. The network is expected to consist of wireless access points (routers) and related network hardware and software, so as to enable wireless user connections conforming to the IEEE 802.11 (“Wi-Fi”) standards. The network should provide direct access to outdoor users or indoor users near building perimeters, and access to other indoor users through a customer premise device supplied by the provider (including the Grantee acting as provider) for a charge or for free, such that each user receives reliable symmetrical throughput of at least 1Mbps (at least 150kbps for public users as specified in C.3.b.).
2. The network must provide robust and industry-leading security protocols and measures to effectively segregate the City’s use of the network from other uses, and each provider’s use of the network from each other’s. The network must provide for access control options including encryption, client-side authentication, MAC address registration, and virtual private networking. The network must provide for protection against malicious clients and programs. The network must allow for access with no user-configured security settings for the free access provided in public places.
3. The network must provide for at least the following classes of users:
  - a. City Users. These users will be City officers, employees, contractors, volunteers, agents, or other users acting on the City’s behalf, as well as City-owned, unmanned wireless devices such as, but not limited to: traffic cameras, parking meters, or sensors. City users will have been identified in advance of use and will use a method of authentication. Traffic from City users designated as critical, or during times designated as critical, must have the highest priority on the network. Subject to any further limits placed on them by the City, these users must have unrestricted access to the City’s portion of the network, and to the Internet.
  - b. Student Users. These users will be up to 1,083 students in 9<sup>th</sup>-12<sup>th</sup> grades in the Winchester Public Schools (WPS), who have been assigned school-owned laptops. They will connect to the existing WPS enterprise network to use WPS network resources and Internet connectivity. They will not require Internet connectivity from the Grantee. In the future, WPS may expand the laptop program to include K-8 students, and the City and WPS may wish to expand wireless access to these laptops, as well.
  - c. Commercial Users. These users will be retail and wholesale customers of the Grantee and providers who purchase access from the Grantee. These users include any free or reduced-price accounts given to low-income residents.

- d. Public Users. These users will be members of the public, not identified in advance of use, who use the network for free in certain public areas. This access will be unencrypted and have the lowest priority on the network. Bandwidth may also be lower than that of other users. Public users must not be able to access network resources other than those intended for their use, but Internet access must not be restricted other than as specified by the City. Public users must be initially routed to a home page (captive portal), of a design approved by the City.
4. The network must support mobility applications for City users, which will allow continuous connections to the network in vehicles traveling up to 60 mph. Mobility applications may also be supported for commercial users, but need not be supported for public users.
5. The network must automatically reroute traffic in the event of a failure to part of the network.
6. The network must include uninterruptible power supplies capable of supporting citywide emergency use by City users for at least ten (10) hours (but preferably longer), in the event of a loss of electrical power to the network. During such time, access to other users may be restricted.
7. The network must be scalable and upgradeable, to prevent it from becoming obsolete and to enable it to adapt to new applications.
8. The network must not cause harmful interference to nearby equipment, including other wireless providers and users, community wireless groups, and other users of the same frequencies.
9. The network must support a connection to the City's existing wide area network, such that City users can have secure and reliable access to the wide area network. This can be achieved through a direct connection, or over the Internet, as appropriate.

#### **D. INSTALLATION**

1. The network should leverage existing public infrastructure, to minimize the need for any new towers or mounting structures. Any equipment installed in visible outdoor locations must conform to the aesthetics of the area in which it is installed, must be physically appropriate for the type of installation used, and must not interfere in any manner with existing equipment or nearby users.
2. The City does not own or operate any overhead public utilities such as electric, telephone, or cable. Approximately 70 street lights in the City are owned and maintained by the City. The remaining street lights are owned and maintained by Allegheny Power. The City also owns and maintains mast arms at approximately 27 signalized intersections, on which equipment may be placed subject to further agreement. The exact locations of these assets can be provided to the Grantee as a GIS layer or other electronic map. Any use of non-City resources, such as Allegheny Power street lights, must be coordinated directly between the Grantee and the non-City entity, without City intervention or remuneration.

3. Grantee may be required to execute a separate right of way agreement to address use of city property in furtherance of installation and operation of the system.
4. To the extent possible, the Grantee is encouraged to use local contractors – particularly small, women-owned, and minority-owned businesses -- to install and maintain the network.
5. Installation of the network must be substantially complete, and the network must be substantially operational, within six (6) months of the date the franchise takes effect. The Grantee will not be held responsible for any delays caused by the City, including delays in the issuance of any permits required by the City and timely applied for by the Grantee.

**E. CITY'S RESPONSIBILITIES**

1. The City will provide access to City facilities to include but not limited to light poles, traffic signals, City buildings and structures.
2. The City is not required to process permit applications in a manner inconsistent with the processing of applications not associated with this RFP and resulting franchise.
3. The City is not responsible for removing or causing to be removed obstructions that prevent the Grantee's network from functioning.

**F. GRANTEE'S RESPONSIBILITIES**

1. The City expects the Grantee to provide a complete, fully-furnished, proven and tested, turnkey solution.
2. The Grantee will be the installer, operator, manager, and owner of the network. The Grantee will act as a provider to the City and to the Grantee's retail and wholesale customers. Wholesale customers will act as providers to their users.
3. The Grantee will be responsible for all equipment, data center operations, management, oversight, monitoring, and other similar functions related to the general operation of the network. The Grantee will not be responsible for such functions with respect to individual users/customers' applications of the network.
4. The Grantee will be responsible for all customer service, technical support, billing, and other similar functions. No user or customer, other than City users, will have any direct contact or relationship with the City regarding these functions.
5. The Grantee must provide system performance and use measurement, monitoring, repair, and maintenance, 24 hours per day. The Grantee must maintain nearly 100% system uptime, as specified in the service level agreement negotiated as part of the franchise.
6. The Grantee must plan for and implement upgrades to equipment, hardware, and software, such that no part of the network's technology becomes obsolete or incompatible.
7. The Grantee will provide the backhaul Internet connections for the network. There is an extensive fiber-optic network in Winchester, owned by Comcast Communications (formerly Adelphia). Any use of non-City resources, such as Comcast Communications



fiber, must be coordinated directly between the Grantee and the non-City entity, without City intervention or remuneration.

8. The Grantee will install, maintain, upgrade, monitor, and operate the network in a manner consistent with all local, state, and federal rules, regulations, ordinances, and laws, particularly those concerning zoning, historic preservation, and communications equipment. The franchise may be revoked if the Grantee fails to maintain the network in an operational status. For purposes of this paragraph, a network outage exceeding one month will be deemed a failure to maintain the network.
9. The Grantee will protect the privacy of all users through appropriate technical design of the network. The Grantee will not monitor or intercept the content of users' communications on the network, except as reasonably necessary in an emergency, for the maintenance of the network, or to respond to a lawful government order. To the extent possible, the Grantee is encouraged to provide a portal that provides content appropriate for the age group(s) accessing the network.

#### **G. PUBLIC BENEFITS**

1. The City will have free use of the network for municipal use, in accordance with the terms negotiated between the parties and specified in the franchise agreement.
2. The public will have free wireless Internet access in at least the following outdoor areas and public facilities in the City. This access will be branded as "Wireless Winchester" and marketed by the City with language approved by the City and the Grantee.
  - a. Loudoun Street Mall (Loudoun Street between Cork Street and Piccadilly Street)
  - b. Jim Barnett Park (1001 East Cork Street)
3. The City desires to provide low-income residents free or reduced-price Internet access accounts upon their request. Eligibility criteria and ordering procedures will be determined through the negotiation process and included in the franchise agreement. Offeror should strive to maximize this benefit consistent with their business plan.

#### **H. COMMERCIAL PRACTICES**

1. Residential and business users may purchase retail Internet access accounts from the Grantee. The monthly rate for a retail residential account should be below the current market rate during the first year of the franchise, exclusive of taxes, third-party fees, and equipment rental. After the first year, the rate may be adjusted to reflect the market.
2. Other Internet service providers may purchase wholesale access to the network, or wholesale Internet access accounts, to resell to their customers.
3. Neither the Grantee nor any other providers using the network may represent, either explicitly or implicitly, that their products or services are endorsed or sponsored by the City.
4. The Grantee will be responsible for determining what taxes, fees, or other charges apply to each of its customers.

## **I. DEMONSTRATION OF CAPABILITIES**

The City may require finalists to demonstrate the capabilities of their proposed solutions, using either an on-site test or an existing network in a location convenient to City staff. The demonstration should include both stationary and mobile access. The City will assist in arranging for any temporary installation necessary to perform an appropriate demonstration. Proposals should include a discussion of the time and logistics necessary to provide the required demonstration.

## **IV. SELECTION PROCEDURE**

This Request for Proposals is divided into two parts:

- Part I - Submission of Firm Experience and Qualifications; and
- Part II - Interviews and presentations from Part I short-listed firms, only.

In general, the selection of a firm(s) will be conducted by the following process:

### **PART I**

1. Statements of firms' experience and qualifications must be submitted in the form defined under SUBMITTAL REQUIREMENTS (Section V).
2. A *Selection Committee* composed of City Staff and consultants as necessary will evaluate and rank all firms.
3. Firms will be evaluated and ranked in accordance with the Part I – EVALUATION CRITERIA detailed in Section VII.

### **PART II**

1. Based on the results of the process to this point, the highest ranked firms will be invited to make a presentation to the *Selection Committee*. The *Selection Committee* will also conduct formal interviews with these firms.
2. The *Selection Committee* will complete the final evaluation and rank the firms as set forth in Section VII below, in order to identify up to one firm whose professional qualifications and proposed services are deemed most meritorious per VA Code §2.2-4301.

In compliance with VA Code § 2.2-4301, negotiations shall be conducted, beginning with the top ranked offeror. If an agreement, satisfactory and advantageous to the CITY can be negotiated with conditions considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such an agreement can be reached.

The *Selection Committee* will recommend the appropriate offeror to the City Manager for recommendation to City Council for award of the franchise.

## **V. SUBMITTAL REQUIREMENT AND CONTENT**

In addition to any other information required by this document, the information listed in this section must be included in all proposals. Failure to provide any required information may result in rejection of the proposal.

Offerors should not use the City's logos, seals, or emblems on proposal materials, except as necessary in an illustration or mockup of a proposed deliverable.

### **1. Title Page**

The title page should reflect the subject of the proposal, the name and contact information of the offeror firm(s), the name and contact information for a contact person, and the date the proposal was prepared.

### **2. Table of Contents**

The Table of Contents should indicate the material included in the proposal by section and page number, and should mirror the items (3-8) in this section.

### **3. Letter of Transmittal**

A letter of transmittal of no more than three pages should include:

- a. A statement of the offeror's understanding of the work required, and a general explanation of the proposal.
- b. The names, titles, and contact information of the persons who are authorized to make representations on behalf of the offeror.
- c. A statement that the individual who signs the transmittal letter is authorized to bind the offeror to contract with the City.

### **4. Profile of the Offeror**

- a. Whether the offeror is a local, regional or national firm or group of firms.
- b. How long the offeror has been in business under the present name and structure. Provide any other names under which the offeror has done business and the dates and locations at which it operated under each name.
- c. Identification of the key full-time and part-time staff who will be assigned direct work on this project.
- d. A copy of the offeror's last two independently audited financial statements, which will be considered proprietary by the City to the extent permitted by law.
- e. A description of any projects executed by the offeror during the most recent three-year period similar in scope to the City's project. To the extent possible, include work for clients who are local or state governments. Explain the roles performed by the proposed personnel in these projects.
- f. A minimum of three references for services comparable to those specified by the City. Provide complete addresses and telephone numbers of each reference, as well as the name, title and the telephone number of a contact individual. For each

reference, describe the contract and its length, when implemented, scope, and dollar value.

## 5. Offeror's Response to Scope of Work

- a. List the make, model, size, weight, estimated location, estimated quantity, and technical specifications (including electrical power requirements, outdoor exposure ratings, and mounting techniques) of all equipment, hardware, and software proposed to be used in the network. Include a photograph of a typical wireless access point, as installed.
- b. Provide a detailed description of the network and backhaul connections, including the capacity of the network for each class of user, maximum concurrent users and bandwidth, and the typical network and Internet bandwidth each class of user can expect.
- c. Explain the suitability of the network for voice (VoIP) and video applications, including stationary and mobile access.
- d. Provide a site suitability survey, signal study, spectrum analysis, or other documentation of the method used to determine that the proposed network will provide citywide wireless coverage. Offerors are not expected to have invested in a comprehensive analysis of the coverage area to prepare a bid, but must demonstrate that there is a reasonable basis for the estimated number and location of access points proposed.
- e. List the specific wireless frequencies used by all equipment, and any limitations or licensing issues resulting from the use of such frequencies.
- f. Detail the business model proposed, including the relationships and responsibilities of all parties, and the identities of any known partners, providers, resellers, subcontractors, or other such entities. Include a specific discussion of the role of commercial advertising, rent, and revenue sharing, if any, in the model. The business model should not include any grant funding that has not already been secured.
- g. Project revenues and expenditures for the proposed duration of the franchise, including key variables and assumptions, retail and wholesale rates, and use by class of users.
- h. Provide a detailed implementation timeline, including all key tasks and subtasks to be performed, milestones to be achieved, and deliverables to be provided.
- i. Discuss comparable alternatives to the proposed solution, and why the proposed solution is a better choice.
- j. Advise all security issues and ways in which the network will provide appropriate security for each class of users.

- k. Outline how the network will respond to problems ranging from routine data congestion to a physical disaster.
  - l. Outline Quality of Service (QoS), traffic shaping, and prioritization options available to ensure the reliability of the network for the City's public safety use.
  - m. Discuss how the Grantee will plan and implement upgrades to avoid any component of the network from becoming obsolete.
  - n. Detail how the network will avoid harmful interference with other networks and users.
  - o. Outline the service level available to each type of user in the event of technical difficulty.
6. Alternate Approaches to the Work

Proposals will be evaluated based on the requirements listed herein. However, offerors are welcome to outline additional services or alternative approaches that they feel are in the City's best interest.

7. Additional Data

Data not specifically requested herein, but which is considered essential to the proposal, may be presented in this. If there is no additional information to present, state "There is no additional information we wish to present." Suggestions of possible additional information include, but are not limited to, copies of relevant media reprints and promotional brochures.

- 8. Verify that required insurance coverage is available (insurance certificates need not be submitted until the award stage).
- 9. A signed hold harmless indemnification agreement.

## **VI. EVALUATION CRITERIA**

Each member of the *Selection Committee* will individually evaluate each firm on the basis of the following criteria. Thereafter, each member will rank the firms, from first to last. The *Selection Committee* will then develop a composite ranking of each firm.

### **PART I - Evaluation Criteria**

- 1. Ability of respondent to provide the services specified in this document, based on experience with similar projects as evidenced by a list of similar projects and references submitted in the proposal;
- 2. Proposed approach and methodology to execute the scope of work, including suitability of the proposed business model;
- 3. Proposed public benefits, both in-kind and financial;
- 4. Financial stability; and
- 5. Experience of specific personnel who will work on the project

### **PART II - Evaluation Criteria**

1. Final adjustments to Part I criteria may be made by each member of the *Selection Committee* upon conclusion of the interview.
2. References: Three references will be reviewed before the *Selection Committee* selects.

**Compensation:** Offeror will not be compensated for the cost of proposal preparation whether or not an award is consummated.

**Investigations:** The *Selection Committee* may make such reasonable investigations, as it deems proper and necessary to determine the ability of the firm to perform the work. The *Selection Committee* and/or its representative(s) reserve the right to inspect the firm's physical premises prior to award to satisfy questions regarding the firm's capabilities.

When staff identifies a preferred offeror, a franchise agreement will be negotiated between City staff and the offeror. City Council will not be a participant in the evaluation and subsequent negotiations. The franchise agreement will include the final terms under which the franchise will be granted if approved by City Council.

## VII. QUESTIONS

In the interest of fairness to all prospective offerors, City staff will not answer questions about this project orally or privately. Written questions regarding this solicitation must be submitted in writing at least two (2) days prior to the proposal due date. Offerors shall rely only upon this document and any written amendments thereto, and written answers to questions, in preparing and submitting their proposals. All other contacts with City personnel concerning this solicitation are discouraged. Submit inquiries to:

Steve Corbit  
Purchasing Agent  
City of Winchester  
15 N. Cameron St  
Winchester, VA 22601  
540-667-1815  
[scorbit@ci.winchester.va.us](mailto:scorbit@ci.winchester.va.us)

## **VIII. GENERAL PROVISIONS:**

### **SUBMISSION OF PROPOSALS:**

Sealed Proposals from qualified firms or groups of firms and their subfranchisees (hereafter, "the Grantee"), to be awarded a franchise for the use of public property for the installation and operation of a citywide wireless will be received by the Purchasing Agent on May 8, 2007 at 2:00 p.m. Eastern Time. The identity of the bidders will be announced at that time. Bids will not be unsealed until after the Council President closes the receiving period at the City Council meeting described below.

The right is reserved, as the interest of the City may require, to revise or amend the specifications prior to the date set for opening proposals; the opening date may be postponed if deemed necessary by the Finance Director. Such revisions and amendments, if any, will be announced by written Addenda to the specifications. In addition, the City reserves the right to accept or reject any and all proposals, in whole or in part, and to waive any informalities.

One (1) original and ten (10) paper copies and one electronic copy of proposals are to be submitted in a sealed envelope bearing the Offerors company name, address, the proposal name and RFP number and the date and time due and mailed or delivered to:

City of Winchester  
Finance Department - Purchasing Division  
15 North Cameron Street, 1st Floor - Rouss City Hall  
Winchester, Virginia 22601

At the City Council meeting on Tuesday, May 8, 2007, at 7:30 p.m., in Council Chambers (Rouss City Hall, 15 North Cameron Street, Winchester, VA 22601), the President will read a list of the offerors and a summary of the offers as prepared by staff. Under State law, offers may also be submitted directly to City Council when the President inquires, during consideration of the franchise item on the meeting docket, as to whether there are any further offers. However, offerors are strongly encouraged to adhere to the April 10<sup>th</sup> preferred deadline above so that staff has adequate time to document receipt of bids.

### **AWARD OF FRANCHISE**

City Council's first regular meeting after offers are due is Tuesday, June 12, 2007. If a franchise agreement has been negotiated by this time, it will be recommended by the City Manager and presented to City Council for approval.

### **SEVERABILITY:**

If any clause or provision of this agreement is or becomes illegal, invalid or unenforceable, such provision shall be severed and the remaining provisions of this Agreement shall continue, in full force and effect unless such severed clause or provision substantially defeats the intent of this Agreement.

### **ASSIGNMENT:**

Franchisee shall not assign this Agreement or any license granted hereby or any interest herein without the prior written consent of the City of Winchester. Any attempted sublicense, assignment or transfer of any of the rights, duties or obligations of the franchisee under Agreement shall be invalid. This provision restricts Franchisee's rights to assign or transfer, but

has no effect on the City regarding its right to assign or transfer and rights or privileges in the Franchised Product.

**LATE PROPOSALS:**

It is the responsibility of the firm to insure the Purchasing Agent receives the submittal by the proposal due date and time, or when asked by the City Council President prior to the reading of the official closing of these proceedings. No submittals or modifications to submittals will be accepted after the proposal due date/time. Late Proposals will be returned to offeror unopened, if the container is properly identified with the firm's return address.

**ACCEPTANCE OR REJECTION OF PROPOSALS:**

The CITY reserves the right to waive information in Proposals, to reject any or all Proposals after all have been examined or to accept the Proposal(s) of the Offeror(s) which it deems most favorable to the interests of the CITY in accordance with the Sections 15.2-200 to 15.2-2105 Code of Virginia.

**ADA REASONABLE ACCOMMODATION CLAUSE:**

If you need any reasonable accommodation for any type of disability in order to participate in this procurement, please contact the Purchasing Department at (540) 667-1815 prior to March 6, 2007 to make arrangements.

**PROPRIETARY INFORMATION:**

Proposal sections containing trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

**DRUG FREE WORKPLACE:**

During the performance of this contract, the Franchisee agrees to (i) provide a drug-free workplace for the Franchisee's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Franchisee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Franchisee, that the Franchisee maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions are binding upon each Franchisee or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a Franchisee, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**EMPLOYMENT DISCRIMINATION BY FRANCHISEE PROHIBITED**

In every contract over \$10,000 the provisions in 1. and 2. below apply:



1. During the performance of this contract, the Franchisee agrees as follows:
  - a. The Franchisee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Franchisee. The Franchisee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The Franchisee, in all solicitations or advertisements for employees placed by or on behalf of the Franchisee, will state that such Franchisee is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The Franchisee will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subFranchisee or vendor.

**INSURANCE:**

The successful offeror shall procure, maintain, and provide proof of, insurance coverage for injuries to persons and/or property damage as may arise from or in conjunction with, the work performed on behalf of the City by the offeror, his agents, representatives, employees or subFranchisees. Proof of coverage as contained herein shall be submitted fifteen (15) days prior to the commencement of work and such coverage shall be maintained by the offeror for the duration of the contract period; for occurrence policies. Claims made policies must be in force or that coverage purchased for three (3) years after contract completion date.

The selected firm shall provide certificates of insurance coverage, pay premiums and keep in force until the expiration of this contract the following policies (*minimum coverage amounts listed*):

- a. Comprehensive General Liability - \$1,000,000 each occurrence bodily injury, and \$1,000,000 each occurrence property damage. The City shall be included as additional insured.
- b. Workers' Compensation and Employer's Liability – Statutory coverage for Virginia.
- c. Professional Liability Errors and Omission Insurance – Not less than \$1,000,000 limit. Sub-consultants shall provide limits commensurate with the responsibilities of their work. The City shall be included as additional insured.
- d. Coverage Provisions:
  1. All deductibles or self-insured retention shall appear on the certificate(s).
  2. The City of Winchester, its' officers/ officials, employees, agents and volunteers shall be added as "additional insured" as their interests may appear. This provision does not apply to Workers' Compensation/Employers' Liability.
  3. The offeror's insurance shall be primary over any applicable insurance or self-insurance maintained by the City.
  4. Shall provide 30 days written notice to the City before any cancellation, suspension, or void of coverage in whole or part, where such provision is reasonable.

5. All coverage for subFranchisees of the offeror shall be subject to all of the requirements stated herein.
6. Failure to comply with any reporting provisions of the policy(s) shall not affect coverage provided the City, its' officers/officials, agents, employees and volunteers.
7. The insurer shall agree to waive all rights of subrogation against the City, its' officers/officials, agents, employees or volunteers for any act, omission or condition of premises which the parties may be held liable by reason of negligence.
8. The offeror shall furnish the City certificates of insurance including endorsements affecting coverage. The certificates are to be signed by a person authorized by the insurance company(s) to bind coverage on its' behalf, if executed by a broker, notarized copy of authorization to bind, or certify coverage must be attached.
9. All insurance shall be placed with insurers maintaining an A.M. Best rating of an A- or better. If A.M. Best rating is less than A-, approval must be received from City's Risk Manager.
10. All coverage designated herein shall be as broad as the Insurance Services Office (ISO) forms filed for use with the Commonwealth of Virginia.

**LICENSES AND PERMITS:**

Franchisees will be responsible for all licenses and permits if required.

**NON-APPROPRIATION OF FUNDS:**

- A. In the event that funds are not appropriated for this Contract for any City fiscal year, following the City's current year, the Contract shall terminate automatically as of the last day for which funds were appropriated without the City providing written notice to the Franchisee prior to the date of termination.
- B. The City shall not consider termination of the Contract pursuant to this section default. Upon such termination, the City shall be released from any obligation to make future payments and shall not be liable for cancellation or termination charges.

**PENALTIES AND INTEREST:**

Any provision of this Contract which requires or attempts to require the City to pay interest or late payment penalties, costs, fees or expenses, including but not limited to attorney's fees, shall be void and shall have no force or effect.

**LIABILITY LIMITATIONS:**

Any provision of this Contract which limits or attempts to limit the liability of the Franchisee shall be void and of no force or effect.

**AVAILABLE REMEDIES:**

Any provisions of this Contract, which limits or attempts to limit any remedies available to the City shall be, void and shall have no force or effect.

**GOVERNING LAW:**

The provisions shall govern this Contract hereof and by the laws of the Commonwealth of Virginia. Any dispute arising out of this Contract shall be resolved in the Circuit Court for the

City of Winchester and/or the U.S. District Court for the Fourth Circuit in Harrisonburg, Virginia.

**HOLD HARMLESS CLAUSE:**

Bids shall provide that during the term of the contract, including warranty period, for the successful bidder indemnifying, defending, and holding harmless the City, its officers, employees, agent and representatives thereof from all suits, actions, claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violation of rights sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the Franchisee or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. The vendor agrees that this clause shall include claims involving infringement of patent or copyrights.

**CONFLICT OF INTEREST / BIDDERS RELATIONSHIP TO THE CITY**

By signature of this bid, the firm (or individual) has no business or personal relationship with any other companies or persons that could be considered as a conflict of interest or potential conflict of interest to the City of Winchester, and that there are no principals, officers, agents, employees, or representatives of this firm that have any business or personal relationships with any other companies or person that could be considered as a conflict of interest or a potential conflict of interest to the City of Winchester, pertaining to any or all work or services to be performed as a result of this request and any resulting contract with the City of Winchester.

**EXPENSES INCURRED IN PREPARING BID**

The City accepts no responsibility for any expense incurred in the bid preparation and presentation, such expenses to be borne exclusively by the bidder.

**QUALIFICATIONS OF OFFEROR'S**

Each offeror may be required, before the award of any contract, to show to the complete satisfaction of the Finance Department-Purchasing Agent, that it has the necessary facilities, ability, and financial resources, to furnish the service or material specified herein in a satisfactory manner. The offeror may also be required to show past history and reference which will enable the Finance Department-Purchasing Agent, to be satisfied as to the offeror's qualification. Failure to qualify according to the foregoing requirements will justify proposal rejection

**BIDDER RESPONSIBILITY**

Before submitting a bid, each bidder shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract, and to verify any representations made by the City that the bidder will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents; nor will it be accepted as a basis for any claim whatsoever for any monetary considerations on the part of the successful bidder.

**CONTRACTUAL DISPUTES**

Disputes shall be addressed in accordance with section 21-61 of the Winchester City Code.

**ETHICS IN PUBLIC CONTRACTING**

This proposal incorporates by reference but is not limited to the provisions of law contained in the Virginia Conflict of Interests Act, the Virginia Governmental Fraud Act, Article 2 and 3 of

Chapter 10 of Title 18.2 of the Code of Virginia as amended, and Article VII of the City of Winchester Purchasing Ordinance.

### **TERMINATION**

**Termination for Convenience:** The City of Winchester may terminate a contract, in whole or in part, whenever the City determines that such termination is in the best interest of the City, without showing cause, upon giving ten (10) days written notice to the vendor.

**Termination for Default:** When the vendor has not performed or has unsatisfactorily performed the contract, the City may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of the City. The Vendor will be paid for work satisfactorily performed prior to termination.

### **MODIFICATION AND WITHDRAWAL OF BIDS**

Before the bid opening, bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a bid must be executed) and delivered to the place where bids are to be submitted at any time **prior** to opening of the bids. The request for withdrawal or modification must be in writing and signed by a person duly authorized to do so.

After the bid opening, the City reserves the right to allow the withdrawal of bids, except as allowed by the Code of the City of Winchester, Virginia, Section 21-43, which states "the Bidder shall give notice in writing of his claim within two (2) business days after conclusion of the bid opening procedure." Bidder shall submit to the City his original work papers, documents and materials used in preparation of his bid sought to be withdrawn.

### **AWARD OF FRANCHISE**

Virginia Code 15.2-2102 shall apply as stated herein: The presiding officer shall read aloud, or cause to be read aloud, a brief summary of each of the bids that have been received, for public information, and shall then inquire if any further bids are offered. If further bids are offered, they shall be received. The presiding officer shall thereafter declare the bidding closed. The presiding officer shall receive recommendations from the staff relative to any bids received in advance and staff's recommendations, if any, on any bids received at the advertised council meeting. After such other investigation as the council sees fit to make, the council shall accept the highest bid from a responsible bidder and shall adopt the ordinance as advertised, without substantial variation, except to insert the name of the accepted bidder. However, the council, by a recorded vote of a majority of the members elected to the council, may reject a higher bid and accept a lower bid from a responsible bidder and award the franchise, right, lease or privilege to the lower bidder, if, in its opinion, some reason affecting the interest of the city or town makes it advisable to do so, which reason shall be expressed in the body of the subsequent ordinance granting the franchise, right, lease or privilege. The process described in this section may run concurrently with any other advertisement or public ordinance requirements of this title, or such requirements as may be contained in charters of such cities or towns.

Virginia Code 15.2-2103 shall apply as stated herein: If, after such advertisements, no bid, or no satisfactory bid, is made, the council may advertise for further bids, and in case no bid at all is made, the council, if it sees fit to do so, may adopt an ordinance in the manner required by law granting such franchises, rights, leases or privileges to any person making application therefor.

After negotiations have been conducted with each Offeror selected, the City shall select the Offeror which, in its opinion, has made the best proposal, and shall award the contract to that Offeror. The City may cancel this RFP or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. Should the City of Winchester determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of this solicitation, and the Franchisee's proposal as negotiated.

## **IX. HOLD HARMLESS AGREEMENT – RFP #200639**

This agreement between the City of Winchester, and \_\_\_\_\_ shall, for the term of the contract, including warranty period, indemnify, defend and hold harmless the City, its officers, employees, agents and representatives thereof from all suits, actions, claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violation of any rights sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the Franchisee/vendor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. Franchisee agrees that this clause shall include claims involving infringement of patent or copyrights.

Franchisee: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name & Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_